

II. Minor Violation Legislation

In 1996, legislation was enacted which required ARB and the 35 local and regional California air pollution and air quality management districts to adopt rules defining minor violations and provide guidelines for issuing a "notice to comply" (NTC). The legislation (AB 2937, Brulte; Stats. 1996, Chapter 775) added H&SC sections 39150 - 39153. Its purpose was to provide a mechanism identifying and correcting minor violations short of assessing fines or penalties. The legislation requires that ARB prepare a report to the Legislature on program implementation by January 1, 2000. The report is to contain actions taken by the ARB and the local air districts to implement a minor violation program and the results of that implementation. Also to be included is an evaluation of the degree to which the purposes described in section 39150(a) have been achieved by local districts. Purposes of 39150(a) include establishing an enforcement policy for minor violations and defining a minor violation when taking into account the danger or potential danger the minor violation poses to human health or welfare, or the environment.

The main difference between the "notice to comply" (NTC) and a "notice of violation" (NOV) is that there are no civil, criminal, or administrative penalties associated with a NTC, except as provided for in law, if the violation is corrected.

The minor violation program prescribed by the legislation has several key components:

- A. AB 2937 prohibits a violation that is knowing or willful, intentional, benefits the violator economically or competitively, or is part of a pattern of neglect or disregard for the law, from being classified as a minor violation;
- B. AB 2937 prohibits violations that are chronic or that are committed by recalcitrant violators from being minor;
- C. A "notice to comply" (NTC) issued for a minor violation is written in the course of conducting an inspection, unless testing must be done to determine the violation and such testing cannot be done during the course of the inspection. If, after test results are available, it is determined an NTC is warranted, the facility or operator will be notified in writing either by mail or in person;
- D. The NTC shall clearly state the nature of the alleged minor violation and a means by which compliance can be achieved; and
- E. The NTC is defined in AB 2937 and must meet certain criteria including:
 - (a) a time limit to comply, not to exceed thirty days;
 - (b) the NTC must set forth a statement that the facility can be re-inspected at any time to ensure compliance with the NTC;
 - (c) an NTC shall not be issued for any minor violation that is corrected immediately in the presence of an inspector. Such a "quick fix" violation may be

documented in the inspection report, but the person shall not be subject to any further enforcement action; and

(d) AB 2937 requires the ARB and the air districts to classify what violations can be considered minor and to establish an appeals process.

AB 2937 further states (reference H&SC section 39152(g), (j) and (k):

1. If a person fails to comply with the notice to comply, or if it is determined that the circumstances surrounding a minor violation are such that immediate enforcement action is warranted to prevent harm to the public health or safety to the environment, officials may take any needed enforcement action;
2. Nothing shall restrict the power of a city or district attorney, county counsel or Attorney General to pursue a criminal proceeding otherwise authorized by law, and nothing shall prevent local officials from cooperating or participating in such a proceeding; and
3. If it is determined that circumstances are such that the assessment of a civil penalty is warranted or required by federal law, in addition to the issuance of a notice to comply, a civil penalty can be assessed if written findings that set forth the basis for the determination are made.

It should be noted that no deadline is specified in the legislation for the adoption of a minor violation program. It should also be noted that the legislation remains in effect only until January 1, 2001 unless a later enacted statute, which is enacted on or before January 1, 2001, deletes or extends that date.

III. ARB Implementation of H&SC Chapter 3 (Minor Violations)

ARB has implemented a minor violation program by adopting a regulation and developing an inspector's manual. The regulation applies to areas for which ARB has principal enforcement authority (see Appendix I). These areas include motor vehicle fuels content, consumer products, and cargo tank inspections (H&SC sections 43830 et. seq., 41712 and 41962, respectively). ARB's Regulation *Definition of Minor Violation and Guidelines for Issuance of a Notice to Comply* added sections 60090 through 60094 of Article 6 of Subchapter 1 of Division 3 of Title 17, California Code of Regulations and became law on May 7, 1999.

ARB has complied with the purpose of Chapter 3 "Minor Violations" and AB 2937 (codified at 39150 - 39153 of the Health and Safety Code) by including specific language in the adopted regulation that specifies that when determining what violations are to be considered minor, ARB must take into account the danger or potential danger the violation poses to human health, welfare, or the environment.

IV. Results and Benefits of Implementation by ARB

Changes to ARB's existing enforcement policy include the addition of "de minimis" emissions-related violations for consideration as a minor violation. Prior to adoption of the rule, emissions-related violations were not considered minor by ARB. An NOV was required for all emissions-related violations and prosecutorial discretion was exercised in determining settlement terms and conditions, including the amount of any penalties. Penalty action did not necessarily follow every NOV issued, depending on the factors set forth in Health and Safety Code sections 42403 and 43031 which include, but are not limited to: the extent of harm caused by the violation; the nature and persistence of the violation; the frequency of past violations; the maintenance record of the source; the nature, extent, and response time of action taken to mitigate the violation; and the financial burden to the perpetrator. Civil and criminal monetary penalties range from up to \$1,000 to \$50,000 per violation for consumer product and cargo tank violations, and from up to \$1,000 to \$250,000 per violation per day for motor vehicle fuels content violations. The actual amount assessed depended upon the nature and circumstances of the violation(s) as generally determined at settlement negotiations between the agency and the violator. A notice to comply was issued for procedural violations only.

Under ARB's new Minor Violation Program, a de minimis emission-related violation is defined as an emission violation that is determined to be so inconsequential as to be trivial, or "de minimis". ARB determined that there was no way to establish precise "de minimis" emission thresholds for all types of violations. Therefore, the ARB's Executive Officer has the authority to use his or her judgment on a case-by-case basis to determine which emissions violations would fall under the definition of "de minimis".

Adoption of ARB's minor violation program now requires ARB to issue a Notice to Comply instead of a Notice of Violation in situations where an emission violation is determined by the Executive Officer to be of such an inconsequential amount, that it is de minimis. Changes to ARB's enforcement policy include:

- ✓ Addition of "de minimis" emission-related violations for consideration as minor (section 60091(a)(1)(A));
- ✓ Documentation of "quick fix" violations in which no notice is written if the source immediately returns to compliance (section 60093 (d));
- ✓ An appeal process for NTC violations (section 60093 (j));
- ✓ Establishment of a maximum 30-day time limit to return to compliance (section 60091 (e)(3)(C)); and
- ✓ Criteria defining chronic and recalcitrant violators (section 60091(a) & (g)).

To implement the Minor Violation Program, ARB developed a Policy and Procedures Manual. The manual was issued to all ARB inspectors in August 1999. The manual includes specific situations where an NTC may be issued and procedures for issuance and distribution of NTC forms and letters. Now that a manual has been developed, the NTC will be used as a

compliance tool for minor violations.

A total of five (5) NTCs have been issued under the new regulation since it was adopted in May 1999. These were issued for procedural fuel reporting violations. Prior to the adoption of ARB's New Minor Violation Policy, these could have been handled with a notice to comply or possibly a small settlement.

Benefits of this legislation for ARB include the formalization of ARB's existing policy and more specific guidelines which are now provided in the Manual. The Manual cites certain instances when an NTC may be issued. This has resulted in a more structured and consistent method of issuing an NTC, with emphasis on returning a source to compliance within a 30-day timeframe.

V. Air District Model Rule

The ARB and the California Air Pollution Control Officers Association (CAPCOA) worked together to make state and local regulations as consistent as possible and meet the intent of the legislation. Specifically, CAPCOA established a committee which included ARB staff to develop a model rule for consideration by all districts and by the ARB (see Appendix III). As part of the development process, workshops were held to receive input from various interest groups. Following the workshops, the model rule was sent to all 35 air districts for use in developing each district's own rule. For the most part, rules adopted by the districts are very similar to the model rule. ARB also used the model rule as a starting point in its development of a state regulation.

ARB staff has reviewed all minor violation rules submitted by local air districts. All district rules were consistent with the minor violation statute. Of the 26¹ districts adopting rules, ten² have included "de minimis" emission-related violations (with language very similar to the ARB's definition).

VI. District Implementation of Health and Safety Code Chapter 3 (Minor Violations)

To help determine the status of program implementation, ARB asked each of the 35 local air districts to provide rule adoption information (see Appendix II). Data collected indicated the following:

- ✓ Twenty-six (26) of the 35 local air districts (74%) have adopted a notice to comply rule, and
- ✓ Nine (9) of the 35 local air districts have not adopted a notice to comply Rule.

1 Additionally, two district board hearings are scheduled in December 1999 to consider adoption. See also Appendix II (*Status of District Rule Adoptions*).

2 Additionally, one of the districts with a hearing scheduled in December 1999 has provisions that include emissions-related violations.

ARB also asked the Districts to respond to a survey. Twenty-eight districts returned surveys which showed the following:

- ✓ Fifteen (15) of the 26 districts that have adopted a rule had an NTC program or policy in place prior to the legislation;
- ✓ Four (4) of the nine (9) that have not adopted a rule have an NTC policy in effect; and,
- ✓ Most of the nine (9) that have not adopted a rule have taken steps toward adopting a rule (drafting and workshopping rules and/or having hearings scheduled before their governing boards).

VII. Results and Benefits of Implementation by Districts

As the implementation is in various stages according to district progress, the results of implementation also vary. ARB has determined that the results of district implementation of this legislation can be discussed based on the following five categories:

- A. Adoption of Rules;
- B. Establishment of a Minor Violation Program (where one did not exist);
- C. Changes to Existing Minor Violation Programs;
- D. Issuance of NTCs Under the New Minor Violation Program; and,
- E. Resulting Benefits of Legislation.

The remainder of this section describes results in each of the five categories listed above.

A. Adoption of Rules

Of the 35 local air pollution control districts, 26 have adopted a minor violation rule. Of the 26 adopted rules, all are similar and comply with the requirements of AB 2937. The main difference among the rules is that some (ten) contain a definition of minor violation that includes "de minimis" emission violations. All adopted rules contained language specifying that the danger a violation poses to or the potential danger the violation poses to human health, welfare or the environment must be taken into account.

B. Establishment of Minor Violation Programs

Of the 26 local air districts that have adopted a rule, 12 reported to ARB that they had no NTC policy in place prior to the adoption of their rule. Therefore, the legislation resulted in the establishment of a minor violation policy in 12 districts where there had been none.

C. Changes to Existing Minor Violation Programs

Of the 26 districts that adopted a rule, fourteen had an existing NTC policy. Three of these fourteen reported that they had made "significant" changes to the existing policy. Reported changes are the following:

1. Inclusion of "record of corrective action taken" which documents actions taken by the source to return to compliance;
2. Inclusion of "re-inspection" language whereby a source is notified that an inspector may re-inspect at any time to determine compliance with the NTC;
3. "Quick fix" violations in which no notice is written if the violation is fixed immediately in the presence of the inspector;
4. Establishment of a 30-day time limit within which the source must return to compliance;
5. Inclusion of "de minimis" emissions violations as minor; and
6. Establishment of an appeals process.

The remaining eleven districts reported no significant changes had been made to their existing policy due to the implementation of this legislation. These districts already had a mechanism to deal with minor violations.

D. Issuance of NTCs Under New Minor Violation Programs

The 26 local air districts which have adopted a minor violation regulation have issued a total of 5,294 NTCs (data through 10-31-99) under programs established by this legislation. The districts have reported that one hundred and seventy-five (175) NTCs have been followed by an NOV for failure to comply with the NTC. The actual number of NOVs may be higher, since not all districts track follow-up NOVs. Documentation of quick fixes was reported by two districts (ARB did not specifically ask for this information; it was provided by two districts in the "comments" portion of the survey). The two districts reporting quick fix information documented 180 quick fixes under their minor violation program. Under the legislation, no NOV or NTC can be issued for minor violations corrected immediately in the presence of an inspector ("quick fix".)

The following table describes the results of implementation based on the number of NTCs issued by local districts. It lists the total number of NTCs issued for each district since the rule was adopted in that district. NTCs issued before rule adoption are not listed. The date the rule was adopted in each district is listed. Also listed is the number of NOVs issued for not complying with the Notice to Comply. There were no appeals of NTCs.

Issuance of NTCs by Local Air Districts

District	NTCs Issued	Follow-up NOVs Issued	Rule Adoption Date
Amador APCD	20	0	06/30/98
Antelope Valley APCD	0	0	01/19/99
Bay Area AQMD	244	1	02/03/99
Butte County APCD	111	2	04/17/97
Colusa County APCD	0	0	04/28/98
Feather River AQMD	25	0	06/02/97
Glenn County APCD	0	0	05/01/99
Great Basin Unified	0	0	05/26/99
Kern County APCD	51	0	01/08/98
Lake County AQMD	1	0	08/18/98
Mendocino County	3	0	12/01/98
Mojave Desert AQMD	0	0	01/25/99
Monterey Bay Unified	56	0	09/16/98
North Coast Unified	1	0	09/25/98
Northern Sierra AQMD	5	0	11/27/98
Northern Sonoma APCD	1	0	04/21/99
Placer County APCD	9	0	08/12/99
Sacramento Metro	269	0	10/01/98
San Joaquin Valley	394	10	08/28/98
San Luis Obispo County	1	0	01/28/98
Santa Barbara	11	0	07/15/99
Shasta County AQMD	16	0	05/12/98
South Coast AQMD	3979	81	11/13/98
Tehama County APCD	9	0	04/21/98
Yolo-Solano AQMD	88	1	11/13/98
Ventura County APCD	-	-	11/09/99

(Data through Sunday 10-31-99)

Note: Not all Districts with an adopted rule have issued NTCs.

E. Resulting Benefits of Legislation

In order to obtain information for this report, we sent each of the 35 local and regional air quality and air pollution control districts a survey. From these surveys, and through the data gathering process (meetings, etc.), ARB received comments on the benefits of the legislation. These comments included statements that the industry preferred the NTC, as it provided no penalties but got industry's attention enough to come into compliance. Other benefits reported by districts are the formalization of existing minor violation policies, improved structure in the guidelines for issuance, and the establishment of minor violation policies in districts where there were none.

One of the larger districts indicated that the legislation resulted in documented guidelines for inspectors for all rules and subsections of the rules. This eliminated a deficiency in their existing enforcement policy and resulted in consistency and uniformity of enforcement in the field. Another district reported an increase in the timely submittals of record-keeping data, due to the possibility of an NTC (with follow-up NOV if necessary) being issued for not reporting promptly. This again got industry's attention and resulted in more timely submittals than in the past. All of these reported improvements and benefits have resulted in a more specific and consistent method of issuing an NTC with emphasis on returning a source to compliance within a 30-day timeframe.

Two districts indicated that since they already had established minor violation programs, the legislation created unnecessary paperwork and an unfunded mandate. However, one of these districts also reported the benefit of a more structured program.

VIII. District Survey Information Pertaining to Legislative Intent

H&SC section 39150 states that it is the intent of the Legislature in enacting Chapter 3 - Minor Violations, to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the district, and the regulated community while maintaining protection of human health and safety and the environment. Since the local air districts have information in these areas, we polled each with our survey.

Of the 28 districts that returned our survey, five chose not to answer the questions regarding legislative intent because district staff believe it is "too early to determine". Of the twenty-three that did answer the five questions regarding legislative intent, 19 (83%) reported that they believed that the intent of the legislation has been met. Twenty-one (91%) reported that they believed that the legislation has had no adverse effect on the environment. The following table summarizes responses to the questions ARB posed to each district about whether they believed the legislative intent of this chapter had been realized (the table reflects the "yes" answers of the 23 districts that responded to these questions).

<u>Intent of Legislation Met?</u>	<u>Faster Compliance Times?</u>	<u>Resource Efficiency?</u>	<u>Better Working Relations?</u>	<u>No Adverse Effect on Environ. or Public Health?</u>
19 (83%)	12 (52%)	14 (61%)	16 (70%)	21 (91%)

IX. Degree to Which the Purposes of Section 39150(a) Have Been Achieved by Districts

Direction provided by statute (H&SC section 39153(a)) specifies that each district shall provide the ARB with information that ARB requests to determine the degree to which the purposes described in subdivision (a) of Section 39150 have been achieved. ARB received and analyzed this data. ARB has broken down 39150(a) into three specific requirements (A, B, and C) and makes a determination on each of these requirements below.

A. Establishment of Program

"The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division..." (emphasis added).

Seventy-four (74%) of the Districts have complied with the requirement of the statute by adopting a rule. The remainder either have a hearing scheduled to present a rule to their governing board to consider, have an existing policy already in place, or are still developing rules. Most are making progress.

B. Define a Minor Violation

39150(a) "...that the enforcement agency finds are minor..." (emphasis added)

All twenty-six districts adopting rules (74%) have included language defining "minor violation" in their adopted regulations.

C. Danger to Public and Environment

39150(a) "...when the danger [the minor violations] pose to, or the potential that they have for endangering, human health, or welfare or the environment are taken into account".

Of the 26 districts with an NTC rule, all contain specific language that states that no violation can be considered a minor violation without taking into account the danger or potential danger the minor violation poses to human health, welfare, or safety of any person(s) or the environment.

X. ARB Approval of Legislative Report

This report was presented to the Air Resources Board at the November 18, 1999 Board meeting. The Board approved the report by adopting Resolution number 99-37.

XI. Conclusions

The ARB and 26 of the 35 local air pollution control districts have complied with the requirement of AB 2937 and Chapter 3 - Minor Violations (codified at 39150 - 39153 of the California Health & Safety Code), by adopting a rule and establishing a minor violation program.

The ARB and 26 of the 35 local air pollution control districts have complied with the intent of 39150(a) that an enforcement policy be established for violations of Chapter 3, Minor Violations (codified at 39150 - 39153). The enforcement agencies find these violations are minor when the danger they pose to, or the potential that they have for endangering, human health or welfare or the environment are taken into account.

Nineteen (83%) of the twenty-three local air districts returning complete surveys reported that they believe the intent of AB 2937 has been met. Twenty-three completed surveys were returned representing approximately 66% of the 35 air districts.

Benefits of the legislation include the following:

- ✓ Formalization of ARB's existing NTC policy;
- ✓ More specific guidelines for issuing NTCs provided in ARB's New NTC Policy and Procedures Manual;
- ✓ Satisfaction of some industry's preference of the NTC as a tool to get their attention and return to compliance without monetary penalty;
- ✓ Formalization of existing air district minor violation policies;
- ✓ Establishment of Minor Violation Programs in air districts where none existed;
- ✓ Establishment of a more specific and consistent method of issuing an NTC with emphasis on returning a source to compliance within a 30-day timeframe (both the ARB and local air districts);
- ✓ Better consistency and uniformity of enforcement in the field due to documentation of instances where a NTC may be issued for all rules and rule subsections; and
- ✓ An increase in the timely submittals of record-keeping data, due to the possibility of receiving an NTC (with follow-up NOV if necessary) for not reporting promptly.

